

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 538

Introduced by Senator Hill

February 22, 2013

~~An act to amend Sections 31101, 31107, 31109.1, 31114 and 31119 of the Corporations Code, relating to franchises. An act to amend Sections 25102.1, 25165, 25252, 25254, 25401, 25530, 25532, 25608, 25608.1, 29542, and 29545 of the Corporations Code, relating to securities.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 538, as amended, Hill. ~~Franchises.~~ *The Corporate Securities Law of 1968.*

(1) *The Corporate Securities Law of 1968 provides for the regulation of the issuance of corporate securities. The law requires an offer or sale of a security that is exempt from registration under the federal Securities Act of 1933 to meet specified requirements, including filing a notice with the Commissioner of Corporations. Commencing on July 1, 2013, various duties of the Commission of Corporations under this law are transferred to the Commissioner of Business Oversight.*

This bill would modify references to that federal law.

(2) *The Corporate Securities Law of 1968 authorizes the commissioner, after appropriate notice and opportunity for hearing, to levy administrative penalties, as specified.*

This bill would authorize, after exhaustion of administrative remedies, the commissioner to apply to the appropriate superior court for a civil judgment of the imposed penalties.

(3) *Existing law makes it unlawful for a person to offer or sell a security by means of making an untrue statement of a material fact or*

omitting to state a material fact necessary to make the statements not misleading, as specified.

This bill would recast this provision and expand the basis for unlawful activity, as specified. By expanding the scope of a crime, this bill would impose a state-mandated program.

(4) The Corporate Securities Law of 1968 authorizes the commission to order a person to refrain from violating certain of its provisions, and provides a person so ordered one year to seek an administrative hearing.

This bill would reduce the period in which an individual may seek a hearing to 30 days, and authorize the commissioner to order a person to refrain from violating a rule or order adopted under the Corporate Securities Law of 1968, and to seek ancillary relief, including, but not limited to a claim for restitution before an administrative law judge. This bill would also allow the commission to file an order for relief with the superior court to enforce a final order from an administrative proceeding that would have the same effect as a judgment of the superior court.

(5) Existing law prohibits a person from, on behalf of a licensed broker-dealer or on behalf of an issuer, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless the broker-dealer and agent have complied with rules of the commissioner for the qualification and employment of those agents. Existing law prohibits a person from, on behalf of a certified investment adviser, offering or negotiating for the sale of investment advisory services of the investment adviser unless the investment adviser and person have complied with rules of the commissioner for the qualification and employment of those persons. Existing law requires the commissioner to impose a fee of \$25 for the filing of a notice or report required by these rules.

This bill would authorize the commissioner to impose a fee of \$35 to keep a notice or report required under these provisions in effect for the following year.

(6) This bill would also make Legislature findings and declarations.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Franchise Investment Law generally provides for the regulation of the offer and sale of franchises. The law requires specific written disclosures, including, but not limited to, an offering circular, and authorizes the sale of a franchise to be exempt from specified requirements if the franchisor meets certain disclosure and notice requirements.

This bill, for that exemption to apply, would modify the requirement that certain written disclosures be made by a franchisor at least 10 business days prior to the sale or material modification of a franchise and instead require those disclosures to be made at least 14 days prior to the sale or modification. The bill also would replace the term for a written document called an “offering circular” with the term “franchise disclosure document.”

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Regular, periodic regulatory examinations of broker-dealers
- 4 and investment advisers is critical to the protection of consumers,
- 5 many of whom rely on broker-dealers and investment advisers for
- 6 help in managing investments and in making sound financial
- 7 decisions.
- 8 (b) The Department of Corporations lacks license fee revenue
- 9 sufficient to perform regular, periodic regulatory examinations of
- 10 broker-dealers and investment advisers at a frequency that would
- 11 ensure high levels of consumer protection.
- 12 (c) It is the intent of the Legislature that revenue raised through
- 13 amendments made by this bill to Corporations Code Sections
- 14 25608 and 25608.1 be used to perform regular, periodic regulatory
- 15 examinations of broker-dealer agency and investment adviser
- 16 representatives at least once every four years, or more often, if
- 17 deemed necessary for the protection of the public by the
- 18 Commissioner of Corporations.
- 19 SEC. 2. Section 25102.1 of the Corporations Code is amended
- 20 to read:
- 21 25102.1. The following transactions are not subject to Sections
- 22 25110, 25120, and 25130:

(a) Any offer or sale of a security to a “qualified purchaser” as that term is defined by rule of the Securities and Exchange Commission pursuant to Section 18(b)(3) of the Securities Act of 1933 (15 U.S.C. 77r), if all of the following requirements are met:

(1) A notice is filed with the commissioner prior to an offer in this state, along with any documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate.

(2) A consent to service of process under Section 25165 is filed with the notice required by paragraph (1).

(3) Payment of a notice filing fee provided for in subdivision (b) of Section 25608.1.

(b) Any offer and sale of a security with respect to a transaction that is exempt from registration under Section 4(4) of the Securities Act of 1933 pursuant to Section 18 (b) (4) (B) of that act.

(c) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(C) of that act.

(d) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to ~~Section 18(b)(4)(D)~~ *Section 18(b)(4)(E)* of that act, if all of the following requirements are met:

(1) A notice in the form of a copy of the completed Form D (17 C.F.R. 239.500) filed with the Securities and Exchange Commission is filed with the commissioner within 15 days of the first sale in this state, along with documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate. The commissioner may allow for a notice in the form of the electronic transmission of the information in Form D.

(2) A consent to service of process under Section 25165 is filed with the notice as required by paragraph (1).

(3) Payment of the notice filing fee provided for in subdivision (c) of Section 25608.1 is made.

(e) Notwithstanding the language of subdivisions (a), (b), (c), and (d) of this section, an issuer may file an application for qualification pursuant to Section 25111, 25112, 25113, 25121, 25131, or 25142.

SEC. 3. Section 25165 of the Corporations Code is amended to read:

25165. Every applicant for qualification of the sale of securities under this law or every person filing an application or a notice under Sections 25100.1, 25101.1, 25102.1, and 25230.1 or a request for or notice of an exemption from qualification (other than a ~~California corporation~~ *California corporation, California limited partnership, California limited liability company*, or a person licensed as a broker-dealer in this state) shall file with the commissioner, in such form as prescribed by rule, an irrevocable consent appointing the commissioner or his or her successor in office to be the applicant's or person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the applicant or person or the successor, executor or administrator thereof, which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous qualification under this law (or application for a permit under any prior law if the application under this law states that such consent is still effective), or in connection with a notice filing under Section 25100.1, 25101.1, 25102.1, and 25230.1, need not file another. Service may be made by leaving a copy of the process in the office of the commissioner but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

SEC. 4. Section 25252 of the Corporations Code is amended to read:

25252. The commissioner may, after appropriate notice and opportunity for hearing, by orders, levy administrative penalties as follows:

(a) Any person subject to this division, other than a broker-dealer or investment adviser, who willfully violates any provision of this division, or who willfully violates any rule or order adopted or issued pursuant to this division, is liable for administrative penalties of not more than one thousand dollars (\$1,000) for the first

1 violation, and not more than two thousand five hundred dollars
2 (\$2,500) for each subsequent violation.

3 (b) Any broker-dealer or investment adviser that willfully
4 violates any provision of this division to which it is subject, or that
5 willfully violates any rule or order adopted or issued pursuant to
6 this division and to which it is subject, is liable for administrative
7 penalties of not more than five thousand dollars (\$5,000) for the
8 first violation, not more than ten thousand dollars (\$10,000) for
9 the second violation, and not more than fifteen thousand dollars
10 (\$15,000) for each subsequent violation.

11 (c) The administrative penalties shall be collected by the
12 commissioner and paid into the State Corporations Fund.

13 (d) The administrative penalties available to the commissioner
14 pursuant to this section are not exclusive, and may be sought and
15 employed in any combination with civil, criminal, and other
16 administrative remedies deemed advisable by the commissioner
17 to enforce the provisions of this division.

18 (e) *After the exhaustion of the review procedures provided in*
19 *accordance with the provisions of the Administrative Procedure*
20 *Act, Chapter 5 (commencing with Section 11500) of Part 1 of*
21 *Division 3 of Title 2 of the Government Code, the commissioner*
22 *may apply to the appropriate superior court for a judgment in the*
23 *amount of the administrative penalty and costs awarded in a final*
24 *decision and order compelling the respondent, or the named or*
25 *cited person, to comply with the final decision of the commissioner*
26 *brought under this division. The application shall include a*
27 *certified copy of the final decision of the commissioner and shall*
28 *constitute a sufficient showing to warrant the issuance of the*
29 *judgment and order from superior court.*

30 SEC. 5. *Section 25254 of the Corporations Code is amended*
31 *to read:*

32 25254. (a) If the commissioner determines it is in the public
33 interest, the commissioner may include in any administrative action
34 brought under this part a claim for ancillary relief, including, but
35 not limited to, a claim for restitution or disgorgement or damages
36 on behalf of the persons injured by the act or practice constituting
37 the subject matter of the action, and the administrative law judge
38 shall have jurisdiction to award additional relief.

39 (b) In an administrative action brought under this part, the
40 commissioner is entitled to recover costs, which in the discretion

1 of the administrative law judge may include an amount representing
2 reasonable attorney's fees and investigative expenses for the
3 services rendered, for deposit into the State Corporations Fund for
4 the use of the Department of Corporations.

5 *(c) After the exhaustion of the review procedures provided in*
6 *accordance with the provisions of the Administrative Procedure*
7 *Act, Chapter 5 (commencing with Section 11500) of Part 1 of*
8 *Division 3 of Title 2 of the Government Code, the commissioner*
9 *may apply to the appropriate superior court for a judgment in the*
10 *amount of the administrative penalty and costs awarded in a final*
11 *decision and order compelling the respondent, or the named or*
12 *cited person, to comply with the final decision of the commissioner*
13 *brought under this division. The application shall include a*
14 *certified copy of the final decision of the commission and shall*
15 *constitute a sufficient showing to warrant the issuance of the*
16 *judgment and order from superior court.*

17 SEC. 6. Section 25401 of the Corporations Code is amended
18 to read:

19 25401. It is unlawful for any person, in connection with the
20 offer, sale, or purchase of a security, directly or indirectly, to do
21 any of the following:

22 (a) Employ a devise, scheme, or artifice to defraud.

23 ~~It~~

24 (b) ~~is unlawful for any person to offer or sell a security in this~~
25 ~~state or buy or offer to buy a security in this state by means of any~~
26 ~~written or oral communication which includes~~ Make an untrue
27 statement of a material fact or ~~omits~~ omit to state a material fact
28 necessary in order to make the statements made, in the light of the
29 circumstances under which they were made, not misleading.

30 (c) Engage in an act, practice, or course of business that
31 operates or would operate as a fraud or deceit upon another
32 person.

33 SEC. 7. Section 25530 of the Corporations Code is amended
34 to read:

35 25530. (a) Whenever it appears to the commissioner that any
36 person has ~~engaged~~ engaged, is engaging, or is about to engage
37 in any act or practice constituting a violation of any provision of
38 this division or any rule or order hereunder, the commissioner may
39 in the commissioner's discretion bring an action in the name of
40 the people of the State of California in the superior court to enjoin

1 the acts or practices or to enforce compliance with this law or any
2 rule or order hereunder. Upon a proper showing, a permanent or
3 preliminary injunction, restraining order, or writ of mandate shall
4 be granted and a receiver, monitor, conservator, or other designated
5 fiduciary or officer of the court may be appointed for the defendant
6 or the defendant's assets, or any other ancillary relief may be
7 granted as appropriate.

8 A receiver, monitor, conservator, or other designated fiduciary
9 or officer of the court appointed by the superior court pursuant to
10 this section may, with the approval of the court, exercise any or
11 all of the powers of the defendant's officers, directors, partners,
12 trustees or persons who exercise similar powers and perform
13 similar duties, including the filing of a petition for bankruptcy. No
14 action at law or in equity may be maintained by any party against
15 the commissioner, or a receiver, monitor, conservator, or other
16 designated fiduciary or officer of the court, by reason of their
17 exercising these powers or performing these duties pursuant to the
18 order of, or with the approval of, the superior court.

19 (b) If the commissioner determines it is in the public interest,
20 the commissioner may include in any action authorized by
21 subdivision (a) a claim for ancillary relief, including but not limited
22 to, a claim for restitution or disgorgement or damages on behalf
23 of the persons injured by the act or practice constituting the subject
24 matter of the action, and the court shall have jurisdiction to award
25 additional relief.

26 (c) In any case in which a defendant is ordered by the court to
27 pay restitution to a victim, the court may in its order require the
28 payment as a money judgment, which shall be enforceable by a
29 victim as if the restitution order were a separate civil judgment,
30 and enforceable in the same manner as is provided for the
31 enforcement of any other money judgment. Any order issued under
32 this subdivision shall contain provisions that are designed to
33 achieve a fair and orderly satisfaction of the judgment.

34 *SEC. 8. Section 25532 of the Corporations Code is amended*
35 *to read:*

36 25532. (a) If, in the opinion of the commissioner, (1) the sale
37 of a security is subject to qualification under this law and it is being
38 or has been offered or sold without first being qualified, the
39 commissioner may order the issuer or offeror of the security to
40 desist and refrain from the further offer or sale of the security until

1 qualification has been made under this law or (2) the sale of a
2 security is subject to the requirements of Section 25100.1, 25101.1,
3 or 25102.1 and the security is being or has been offered or sold
4 without first meeting the requirements of those sections, the
5 commissioner may order the issuer or offeror of that security to
6 desist and refrain from the further offer or sale of the security until
7 those requirements have been met.

8 (b) If, in the opinion of the commissioner, a person has been or
9 is acting as a broker-dealer or investment adviser, or has been or
10 is engaging in broker-dealer or investment adviser activities, in
11 violation of Section 25210, 25230, or 25230.1, the commissioner
12 may order that person to desist and refrain from the activity until
13 the person has been appropriately licensed or the required filing
14 has been made under this law.

15 (c) If, in the opinion of the commissioner, a person has violated
16 or is violating Section 25401, the commissioner may order that
17 person to desist and refrain from the violation.

18 *(d) If the commissioner determines that a person has engaged,*
19 *is engaging, or is about to engage in an act, practice, or course*
20 *of business constituting a violation of this division or a rule*
21 *adopted or order issued under this division, the commissioner may*
22 *issue an order directing the person to desist and refrain from*
23 *engaging in the act, practice, or course of business, or take other*
24 *action necessary or appropriate to comply with this division.*

25 *(e) If the commissioner determines it is in the public interest,*
26 *the commissioner may include in any administrative action brought*
27 *under this division a claim for ancillary relief, including, but not*
28 *limited to, a claim for restitution or disgorgement or damages on*
29 *behalf of the persons injured by the act or practice constituting*
30 *the subject matter of the action, and the administrative law judge*
31 *shall have jurisdiction to award additional relief.*

32 ~~(d)~~

33 (f) If, after an order has been served under subdivision (a), (b),
34 or (c), a request for hearing is filed in writing within 30 days of
35 the date of service of the order by the person to whom the order
36 was directed, a hearing shall be held in accordance with provisions
37 of the Administrative Procedure Act, Chapter 5 (commencing with
38 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
39 Code, and the commissioner shall have all of the powers granted
40 under that chapter. Unless the hearing is commenced within 15

1 business days after the request is filed (or the person affected
2 consents to a later date), the order is rescinded.

3 If that person fails to file a written request for a hearing within
4 30 days from the date of service of the order, the order shall be
5 deemed a final order of the commissioner and is not subject to
6 review by any court or agency, notwithstanding Section 25609.

7 *The commissioner may file a certified copy of the final order*
8 *with the clerk of the superior court or any court of competent*
9 *jurisdiction. The order so filed has the same effect as a judgment*
10 *of the court and may be recorded, enforced, or satisfied in the*
11 *same manner as a judgment of the court.*

12 *If a person does not comply with an order under this section,*
13 *the commissioner may petition the superior court or any court of*
14 *competent jurisdiction to enforce the order. The court may not*
15 *require the commissioner to post a bond in an action or proceeding*
16 *under this section. If the court finds, after service and opportunity*
17 *for hearing, that the person was not in compliance with the order,*
18 *the court may adjudge the person in civil contempt of the order.*
19 *The court may impose a further civil penalty against the person*
20 *for contempt and may grant any other relief the court determines*
21 *is just and proper in the circumstances.*

22 *SEC. 9. Section 25608 of the Corporations Code is amended*
23 *to read:*

24 25608. (a) The commissioner shall charge and collect the fees
25 fixed in this section and Section 25608.1. All fees charged and
26 collected under this section and Section 25608.1 shall be
27 transmitted to the Treasurer at least weekly, accompanied by a
28 detailed statement thereof and shall be credited to the State
29 Corporations Fund.

30 (b) The fee for filing an application for a negotiating permit
31 under subdivision (c) of Section 25102 is fifty dollars (\$50).

32 (c) The fee for filing a notice pursuant to paragraph (5) of
33 subdivision (h) of Section 25102 and the fee for filing a notice
34 pursuant to paragraph (4) of subdivision (f) of Section 25102, in
35 addition to the fee prescribed in those paragraphs, if applicable,
36 shall be determined based on the value of the securities proposed
37 to be sold in the transaction for which the notice is filed and in
38 accordance with subdivision (g), and shall be as follows:

39
40 Value of Securities

Filing Fee

Proposed to be Sold	
\$25,000 or less	\$ 25
\$25,001 to \$100,000	\$ 35
\$100,001 to \$500,000	\$ 50
\$500,001 to \$1,000,000	\$150
Over \$1,000,000	\$300

(d) The fee for filing an application for designation of an issuer pursuant to subdivision (k) of Section 25100 is fifty dollars (\$50).

(e) The fee for filing an application for qualification of the sale of securities by notification under Section 25112 or by permit under paragraph (1) of subdivision (b) of Section 25113 (except applications for qualification by permit of the sale of any guarantee of any security, the fees for which applications are fixed in subdivision (k)) is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

The fee for filing a small company application for qualification of the sale of securities by permit under paragraph (2) of subdivision (b) of Section 25113 is two thousand five hundred dollars (\$2,500). In the case where the costs of processing a small company application exceed the filing fee, an additional fee shall be charged, not to exceed one thousand dollars (\$1,000), over and above the filing fee based on the costs of the salary or other compensation paid to persons processing the application plus overhead costs reasonably incurred in the performance of the work. In determining the costs, the commissioner may use the estimated average hourly cost for all persons processing applications for the fiscal year.

(f) The fee for filing an application for qualification of the sale of securities by coordination under Section 25111 or a notice of intention to sell under subdivision (t) of Section 25100 is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

(g) For the purpose of determining the fees fixed in subdivisions (e) and (f):

1 (1) The value of the securities shall be the price at which the
2 company proposes to sell the securities, or the value, as alleged in
3 the application, or the actual value, as determined by the
4 commissioner, of the consideration (if other than money) to be
5 received in exchange therefor, or of the securities when sold,
6 whichever is greater.

7 (2) Interim or voting trust certificates shall have a value equal
8 to the aggregate value of the securities to be represented by the
9 interim or voting trust certificates.

10 (3) The value of a warrant or right to purchase or subscribe to
11 another security of the same or another issuer shall be an amount
12 equal to the consideration to be paid for that warrant or right plus
13 an amount equal to the consideration to be paid upon purchase of
14 the additional securities, provided that if the latter amount is not
15 determinable at the time of qualification, that amount shall then
16 be the value of the additional securities as determined by the
17 commissioner.

18 (4) In the case of a share dividend where the shareholders are
19 given an option to accept either cash or additional shares of
20 common stock, the value of the securities to be sold shall be the
21 maximum amount of cash that would be payable in the event that
22 all shareholders elected to accept cash.

23 (h) The fee for filing an application for qualification of the sale
24 of securities by permit under Section 25121 is:

25 (1) Two hundred dollars (\$200) in connection with any change
26 (including any stock split or reverse stock split or stock dividend,
27 except a stock dividend where the shareholders are given an option
28 to accept either cash or additional shares of common stock) in the
29 rights, preferences, privileges, or restrictions of or on outstanding
30 securities.

31 (2) Two hundred dollars (\$200) plus one-fifth of 1 percent of
32 the value, as alleged in the application, or the actual value, as
33 determined by the commissioner, of the consideration to be
34 received in exchange therefor, up to a maximum aggregate fee of
35 two thousand five hundred dollars (\$2,500), in any exchange of
36 securities by the issuer with its existing security holders
37 exclusively, or in any exchange in connection with any merger or
38 consolidation or purchase of corporate assets in consideration of
39 the issuance of securities, or any entity conversion transaction.

1 (i) The fee for filing an application for qualification of the sale
2 of securities by notification under Section 25131 shall be one
3 hundred dollars (\$100).

4 (j) The fee for an application for the removal of any condition
5 under Section 25141 is fifty dollars (\$50).

6 (k) The fee for filing any application for a permit to execute or
7 issue any guarantee of any security is fifty dollars (\$50).

8 (l) The fee for acting as escrowholder for securities under
9 Section 25149 is fifty dollars (\$50). In addition, a fee of two dollars
10 and fifty cents (\$2.50) shall be paid for the deposit with the
11 commissioner of each new certificate or other document resulting
12 from a transfer in escrow.

13 (m) The fee for filing an application for an order (1) consenting
14 to the transfer in escrow of securities or (2) consenting to the
15 transfer of securities subject to any condition imposed by the
16 commissioner requiring the commissioner's consent to the transfer
17 is twenty dollars (\$20) for each transfer.

18 (n) The filing fee for an amendment to an application filed after
19 the effective date of the qualification of the sale of securities is
20 fifty dollars (\$50) plus any additional fee that would have been
21 required to be paid with the original application for qualification
22 of the sale of securities under this section if the matters set forth
23 in the amendment had been included in the original application.

24 (o) (1) The fee for filing an application for a broker-dealer
25 certificate under Section 25211 is three hundred dollars (\$300).

26 (2) Each broker-dealer shall pay to the commissioner its pro
27 rata share of all costs and expenses, reasonably incurred in the
28 administration of the broker-dealer program under this division,
29 as estimated by the commissioner for the ensuing year and any
30 deficit actually incurred or anticipated in the administration of the
31 program in the year in which the assessment is made. The pro rata
32 share shall be the proportion that the broker-dealer and the number
33 of its agents in this state bears to the aggregate number of
34 broker-dealers and agents in this state as shown by records
35 maintained by or on behalf of the commissioner. The pro rata share
36 may include the costs of any examinations, audit, or investigation
37 provided for in subdivision (r).

38 (3) Every broker-dealer who has secured from the commissioner
39 a certificate shall, in order to keep the certificate in effect for an

1 additional period, pay a minimum assessment of seventy-five
2 dollars (\$75) on or before the 31st of December in each year.

3 (4) The commissioner may assess and levy against each
4 broker-dealer any additional amount above the minimum
5 assessment amount of seventy-five dollars (\$75) that is reasonable
6 and necessary to support the broker-dealer program under this
7 division. If an additional amount is assessed, the commissioner
8 shall notify each broker-dealer by mail of any additional amount
9 assessed and levied against it on or before the 30th day of May in
10 each year, and that amount shall be paid within 20 days thereafter.
11 If payment is not made within 20 days, the commissioner shall
12 assess and collect a penalty in addition to the assessment of 1
13 percent of the assessment for each month or part of a month that
14 the payment is delayed or withheld.

15 (5) If a broker-dealer fails to pay any assessment on or before
16 the 30th day of the month following the day upon which payment
17 is due, the commissioner may by order summarily suspend or
18 revoke the certificate issued to the broker-dealer. If, after that order
19 is made, a request for hearing is filed in writing and a hearing is
20 not held within 60 days thereafter, the order is deemed rescinded
21 as of its effective date. During any period when its certificate is
22 revoked or suspended, a broker-dealer shall not conduct business
23 pursuant to this division except as may be permitted by order of
24 the commissioner; provided, however, that the revocation,
25 suspension, or surrender of a certificate shall not affect the powers
26 of the commissioner as provided under this division.

27 (6) In determining the amount assessed, the commissioner shall
28 consider all appropriations from the State Corporations Fund for
29 the support of the broker-dealer program under this division and
30 all reimbursements applicable to the administration of the
31 broker-dealer program under this division.

32 (p) (1) The commissioner shall charge a fee of twenty-five
33 dollars (\$25) for the filing of a notice or report required by ~~rule~~
34 *rules* adopted pursuant to subdivision (b) of Section 25210 or
35 subdivision (b) of Section 25230.

36 (2) *The commissioner may charge a fee up to thirty-five dollars*
37 *(\$35) to keep in effect for the following year any notice or report*
38 *required by rules adopted pursuant to subdivision (b) of Section*
39 *25210 or subdivision (b) of Section 25230.*

1 (3) No person shall, on behalf of a broker-dealer licensed
2 pursuant to Section 25211, effect any transaction in, or induce or
3 attempt to induce the purchase or sale of, any security in this state
4 unless the broker-dealer pays the annual fee required by paragraph
5 (2) of this subdivision on or before the day upon which payment
6 is due.

7 (4) No person may, in this state, on behalf of an investment
8 adviser licensed pursuant to Section 25231, offer or negotiate for
9 the sale of investment advisory services of the investment adviser;
10 determine which recommendations shall be made to, make
11 recommendations to, or manage the accounts of, clients of the
12 investment adviser; or determine the reports or analyses
13 concerning securities to be published by the investment adviser;
14 unless the investment adviser pays the annual fee required by
15 paragraph (2) on or before the day upon which payment is due.

16 (5) The commissioner may by order summarily enjoin an
17 individual from performing any activity under paragraph (3) or
18 (4) if the annual fee in paragraph (2) is not paid on or before the
19 day upon which payment is due. An order under this paragraph
20 may not be made before 10 days after notice by the commissioner
21 that the fee is due and unpaid.

22 (q) (1) Except as provided for in paragraph (2), the fee for filing
23 an application for an investment adviser under Section 25231 is
24 one hundred twenty-five dollars (\$125), and payment of this
25 amount shall keep the certificate, if granted, in effect during the
26 calendar year during which it is granted. Every investment adviser
27 who has secured from the commissioner a certificate shall, in order
28 to keep the certificate in effect for an additional period, pay a
29 renewal fee of one hundred twenty-five dollars (\$125) on or before
30 the 31st day of December.

31 (2) Paragraph (1) shall not apply to a broker-dealer licensed
32 under Section 25210.

33 (r) (1) Except as provided for in paragraph (2), the fee for any
34 routine or nonroutine regulatory examination, audit, or
35 investigation is the amount of the salary or other compensation
36 paid to the persons making the examination, audit, or investigation
37 plus the amount of expenses including overhead reasonably
38 incurred in the performance of the work. In determining the costs
39 associated with an examination, audit, or investigation, the
40 commissioner may use the estimated average hourly cost for all

1 persons performing examinations, audits, or investigations for the
2 fiscal year.

3 (2) An investment adviser licensed under Section 25230 pursuant
4 to the Investment Adviser Registration Depository shall not be
5 subject to paragraph (1) only in regard to the fee for a routine
6 regulatory examination of its investment advisory services for
7 which it is licensed under Section 25230.

8 (s) The fee for any hearing held by the commissioner pursuant
9 to Section 25142 shall be the sum determined by the commissioner
10 to cover the actual expense of noticing and holding the hearing.

11 (t) The commissioner may fix by rule a reasonable charge for
12 any publications issued under his or her authority. The charges
13 shall not apply to reports of the commissioner in the ordinary
14 course of distribution.

15 (u) The fee for filing an offer under subdivision (b) of Section
16 25507 shall be the amount of filing fee payable under subdivision
17 (e), (f), (h), or (i) of this section if an application had been filed to
18 qualify the transaction in which the securities upon which the offer
19 is to be made were sold in violation of the qualification provisions
20 of this law.

21 (v) The fee for filing an application for exemption pursuant to
22 subdivision (l) of Section 25100 is two hundred fifty dollars (\$250).

23 (w) The commissioner may by rule require payment of a fee
24 for filing a notice or report required by a rule adopted pursuant to
25 Section 25105. The fee required in connection with a transaction
26 as defined by that rule shall not exceed the fees specified in
27 subdivision (c) based on the value of the securities sold, but the
28 commissioner may permit a single notice for more than one
29 transaction.

30 (x) The fee for filing the first notice of transaction under
31 subdivision (n) of Section 25102 is six hundred dollars (\$600).

32 (y) The fee for filing a notice of transaction under subdivision
33 (o) of Section 25102 shall be the fee for filing an application for
34 qualification of the sale of securities by permit under paragraph
35 (1) of subdivision (b) of Section 25113 as set forth in subdivision
36 (e) of this section.

37 (z) The fee for filing a notice of transaction under subdivision
38 (h) of Section 25103 shall be six hundred dollars (\$600).

39 *SEC. 10. Section 25608.1 of the Corporations Code is amended*
40 *to read:*

1 25608.1. (a) The fee for an investment company filing a notice
2 pursuant to subdivision (b) of Section 25100.1 is two hundred
3 dollars (\$200) plus one-fifth of 1 percent of the aggregate value
4 of the securities sought to be sold in this state up to a maximum
5 aggregate fee of two thousand five hundred dollars (\$2,500).

6 (b) The fee for an issuer filing a notice pursuant to subdivision
7 (a) of Section 25102.1 is six hundred dollars (\$600).

8 (c) The fee for an issuer filing a notice pursuant to subdivision
9 (d) of Section 25102.1 is three hundred dollars (\$300).

10 (d) (1) The fee for an investment adviser filing a notice
11 pursuant to subdivision (b) of Section 25230.1 is one hundred
12 twenty-five dollars (\$125) and the fee for filing a notice or report
13 required by ~~rule~~ rules adopted pursuant to subdivision (c) of
14 Section 25230.1 is twenty-five dollars (\$25).

15 (2) *The commissioner may charge a fee up to thirty-five dollars*
16 *(\$35) to keep in effect for the following year any notice or report*
17 *required by rules adopted pursuant to subdivision (b) of Section*
18 *25210 or subdivision (b) of Section 25230.*

19 (3) *The commissioner may by order summarily enjoin an*
20 *individual from performing any activity under subdivision (c) of*
21 *Section 25230.1 if the annual fee required by paragraph (2) is not*
22 *paid on or before the day upon which payment is due. An order*
23 *under this paragraph may not be made before 10 days after notice*
24 *by the commissioner that the fee is due and unpaid.*

25 SEC. 11. Section 29542 of the Corporations Code is amended
26 to read:

27 29542. (a) If, in the opinion of the commissioner, any person
28 is engaging in any activity in violation of any provision of this
29 law, or rule or order under this law, the commissioner may order
30 the person to desist and refrain from the activity unless and until
31 the activity will not be in violation of any provision of this law or
32 any rule or order under this law.

33 (b) If after an order has been made under subdivision (a), a
34 request for hearing is filed in writing within one year of the date
35 of service of the order by the person to whom the order was
36 directed, a hearing shall be held in accordance with the
37 Administrative Procedure Act (Chapter 5, (commencing with
38 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
39 Code), and the commissioner shall have all of the powers granted
40 under the Administrative Procedure Act. Unless the hearing is

1 commenced within 15 business days after the request is filed (or
2 the person affected consents to a later date), the order is rescinded.

3 If that person fails to file a written request for a hearing within
4 ~~one year~~ 30 days from the date of service of the order, the order
5 shall be deemed a final order of the commissioner and shall not
6 be subject to review by any court or agency, notwithstanding
7 Section 29563.

8 *SEC. 12. Section 29545 of the Corporations Code is amended*
9 *to read:*

10 29545. (a) The commissioner may take actions that are
11 authorized by Section 9a 13a-2 of Title 7 of the United States Code
12 (Section 6d of the federal Commodity Exchange Act) as amended
13 before or after the effective date of this section.

14 (b) Nothing in this section shall be construed as a limitation on
15 the powers of the commissioner under this act or any other law
16 administered by the commissioner.

17 *SEC. 13. No reimbursement is required by this act pursuant*
18 *to Section 6 of Article XIII B of the California Constitution because*
19 *the only costs that may be incurred by a local agency or school*
20 *district will be incurred because this act creates a new crime or*
21 *infraction, eliminates a crime or infraction, or changes the penalty*
22 *for a crime or infraction, within the meaning of Section 17556 of*
23 *the Government Code, or changes the definition of a crime within*
24 *the meaning of Section 6 of Article XIII B of the California*
25 *Constitution.*

26
27
28 **All matter omitted in this version of the bill**
29 **appears in the bill as introduced in the**
30 **Senate, February 22, 2013. (JR11)**
31